

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4658 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF BHANVARLAL V. TRIVEDI

Versus

COMMISSIONER OF POLICE & ORS.

Appearance:

MR RR VAKIL for Petitioners

MR HV CHHATRAPATI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/04/97

ORAL JUDGMENT

#. This petition has been filed by legal heirs of Bhanvarlal V. Trivedi who died on 20.4.90. Deceased Bhanvarlal was a Sub Inspector in the Police Department, Government of Gujarat. After holding a full fledged departmental inquiry against him on the misconduct committed by him, he was ordered to be removed from the services. The matter was taken up by him in appeal and the said appeal has been dismissed. Hence this Special

Civil Application.

#. Two-fold contentions have been made by the learned counsel for the petitioners. Firstly, it is contended that out of two charges, one charge regarding accepting bribe has not been proved and as such only on the charge of consuming liquor, the petitioner could not have been removed from services as for that charge, he has been acquitted in the criminal case. It has next been contended that when the serious charge of accepting bribe was not accepted, removal of the employee on the ground of consuming liquor is highly disproportionate and excessive.

#. On the other hand, the learned counsel for the respondents contended that the deceased was a police Sub Inspector and being in police department, consumption of liquor in the State of Gujarat where there is total prohibition, is very serious and grave misconduct and on the same being proved, minimum penalty is of removal or dismissal from the services. So far as the acquittal of deceased employee under the Prohibition Act is concerned, it is contended that he has been acquitted on a technical ground. Apart from this there is no automatic exoneration of charges merely on acquittal of petitioner in the criminal case of prohibition.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties. There is a concurrent finding of fact of the disciplinary authority as well as of the appellate authority that the deceased employee, a Police Sub Inspector has consumed liquor. Sitting under Article 226 of the Constitution of India, this Court will not examine the matter as appellate authority. The learned counsel for the petitioners is unable to satisfy this Court that there was no material evidence on record to connect the deceased employee with the charge of consuming liquor. Further contention has been made that the evidence produced by the Department in the departmental inquiry against the deceased employee was not sufficient to connect him with the misconduct. This ground is wholly untenable as this Court will not go on the question of sufficiency of evidence in the departmental inquiry. If there is any evidence on record and it was considered to be sufficient to hold the delinquent employee to be guilty of charges, this Court will not reappreciate the evidence or go on this question sitting under Article 226 of the Constitution. The arena of evidence is not to be entered into by this Court sitting under Article 226 of the Constitution of India, in the matter of departmental

/ disciplinary proceedings against the delinquent employee. It has been brought to the notice of the Court that the Government servants are even not eligible to get permits for liquor. If that is the position, then it goes against the deceased employee. Moreover, he was a Sub Inspector in Police department which is concerned with enforcement of prohibition law in the State of Gujarat. In the State of Gujarat there is total prohibition and as such taking liquor by a Police Sub Inspector is certainly grave and serious misconduct and on proof of the same, minimum penalty should have been and has rightly been given to the deceased employee in this case, of the removal of his services.

#. The acquittal of the deceased delinquent in the criminal case of prohibition is hardly of any substance in the present case. Moreover, the acquittal of the deceased delinquent employee in the criminal case was only on the technical ground. Even if it would have been on merits, there was no bar to proceed against him departmentally for misconduct. Reference may have to the recent decision of the Hon'ble Apex Court in the case of A.P. State Road Transport Corporation v. Mohd. Yousuf Miya & Ors., reported in (1997)2 SCC 699.

#. So far as the next contention of the learned counsel for the petitioners is concerned, it is devoid of any substance. This Court sitting under Article 226 of the Constitution of India has very very limited powers of judicial review on the question of punishment to be imposed upon the delinquent employee for proved misconduct. A reference may have to two decisions of Hon'ble Supreme Court in the case of State Bank of India v. Samrendra Kishore Endow & Anr., reported in JT 1994(1) SC 217 and in the case of B.C. Chaturvedi v. Union of India & Ors., reported in JT 1995(8) SC 65. Moreover, as stated earlier in a case where the police officer is found consuming liquor in a state where there is total prohibition, for proof of this misconduct, minimum penalty should have been removal or dismissal from services. The net result of the aforesaid discussion is that no interference whatsoever is called for in this case in the orders impugned by the petitioners.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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